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25 CENTRAL DISTRICT OF CALIFORNIA  
26 WESTERN DIVISION

27 UNITED STATES OF AMERICA	)	
28 and CALIFORNIA DEPARTMENT	)	
29 OF TOXIC SUBSTANCES	)	
30 CONTROL,	)	Civil No.
31 Plaintiffs,	)	
32 v.	)	CONSENT DECREE
33	)	
34 WHITE & WHITE PROPERTIES,	)	
35 et al.,	)	
36 Defendants.	)	
37	)	

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## **I. BACKGROUND**

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the California Department of Toxic Substances Control (“DTSC”) filed a joint complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Baldwin Park Operable Unit (Area 2) of the San Gabriel Valley Superfund Sites, Areas 1-4, in Los Angeles County, California (“the BPOU Area”), together with accrued interest.

B. The Defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

C. The United States, DTSC, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent

Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, DTSC, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "BPOU Area" shall mean the Baldwin Park Operable Unit (Area 2) of the San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa, Irwindale, and Baldwin Park, in Los Angeles County, California, and depicted generally on the map attached as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any

1 successor departments, agencies or instrumentalities of the United States.

2 f. "DTSC" shall mean the California Department of Toxic Substances  
3 Control and any predecessor or successor departments or agencies of DTSC.

4 g. "DTSC Response Costs" shall mean: (i) all past costs, including,  
5 but not limited to, direct and indirect costs that DTSC has incurred at or in  
6 connection with the BPOU Area prior to the entry of this Consent Decree, and  
7 (ii) all future costs (including, but not limited to, direct and indirect costs) related  
8 to oversight of the Work, that DTSC will incur at or in connection with the BPOU  
9 Area.

10 h. "EPA" shall mean the United States Environmental Protection  
11 Agency and any successor departments, agencies or instrumentalities of the United  
12 States.

13 i. "EPA Hazardous Substance Superfund" shall mean the Hazardous  
14 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

15 j. "Explanation of Significant Differences" or "ESD" shall mean the  
16 Explanation of Significant Differences relating to the BPOU Area issued by EPA  
17 in May 1999. The ESD is attached as Appendix C.

18 k. "Interest" shall mean interest at the rate specified for interest on  
19 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.  
20 § 9507, compounded annually on October 1 of each year, in accordance with 42  
21 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the  
22 time the interest accrues. The rate of interest is subject to change on October 1 of  
23 each year.

24 l. "Paragraph" shall mean a portion of this Consent Decree identified  
25 by an Arabic numeral or an upper or lower case letter.

26 m. "Parties" shall mean the United States, DTSC, and Settling  
27 Defendants.

28 n. "Plaintiffs" shall mean the United States and DTSC.

1                   o. “ROD” shall mean the EPA Record of Decision and all  
2 attachments thereto relating to the interim remedy for the BPOU Area, which was  
3 signed by the delegate of the Regional Administrator, EPA Region 9 on March 31,  
4 1994. The ROD is attached as Appendix B.

5                   p. “Response Costs” shall mean: (i) all past costs, including, but not  
6 limited to, direct and indirect costs, that the United States has incurred at or in  
7 connection with the BPOU Area prior to the entry of this Consent Decree, and  
8 (ii) all future costs (including, but not limited to, direct and indirect costs) related  
9 to oversight of the Work, that the United States will incur at or in connection with  
10 the BPOU Area.

11                   q. “Section” shall mean a portion of this Consent Decree identified by  
12 a Roman numeral.

13                   r. “Settling Defendants” shall mean White & White Properties, RPM  
14 Merit, Inc., Whico Machine Company, Inc., White, White & White, White, White,  
15 White & White Properties, Noram Corporation, Astro Productions & Cam  
16 Engineering, Donald White, John White, Robert Rautenberg, the Estate of Evelyn  
17 Rautenberg, Kenneth Wideman, Stella Wideman, the 204 South Motor Avenue  
18 QSF Trust, and Motor/Irwindale Neighborhood QSF Trust.

19                   s. “Site” shall mean the San Gabriel Valley Superfund Sites, Areas 1-  
20 4, in Los Angeles County, California.

21                   t. “United States” shall mean the United States of America, including  
22 its departments, agencies and instrumentalities.

23                   u. “Work” shall mean all activities required to be performed to  
24 implement the ROD, as supplemented by the ESD, at or in connection with the  
25 BPOU Area.

## **V. PAYMENT OF RESPONSE COSTS**

4. Payment of Response Costs to EPA. Within 5 business days after Settling Defendants receive notice from the United States that this Consent Decree has been lodged, Settling Defendants shall deposit \$300,000 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the “Escrow Account”). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court’s denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is entered by the Court, Settling Defendants shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 5 and 6 below.

5. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office in the Central District of California following lodging of the Consent Decree.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site Spill Number 0927, DOJ case number 90-11-2-354/13, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the Site 0927 San Gabriel Valley/Baldwin Park Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the BPOU Area, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Payment of DTSC Response Costs to DTSC. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall pay to DTSC



1 \$75,000 in the form of a certified check or checks made payable to Cashier,  
2 California Department of Toxic Substances Control, and bearing on its face the  
3 docket number of this proceeding.

4 9. Settling Defendants shall send their certified check(s), along with a  
5 transmittal letter referencing the Baldwin Park Operable Unit, San Gabriel Valley  
6 Superfund Sites, Project Nos. 300133, 300345, 300349, and 300350, to:

7 Department of Toxic Substances Control  
8 Accounting/Cashier  
9 1001 I Street, 4<sup>th</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

## 10 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

11 10. Interest on Late Payments. If Settling Defendants fail to make any  
12 payment under Paragraph 4 (Payment of Response Costs to EPA) or Paragraph 8  
13 (Payment of DTSC Response Costs to DTSC) by the required due date, Interest  
14 shall continue to accrue on the unpaid balance through the date of payment.

### 15 11. Stipulated Penalty.

16 a. If any amounts due under Paragraph 4 are not paid by the required  
17 date, Settling Defendants shall be in violation of this Consent Decree and shall pay  
18 to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph  
19 10, \$1,000 per violation per day that such payment is late.

20 b. Stipulated penalties are due and payable within 30 days of the  
21 date of the demand for payment of the penalties by EPA. All payments to  
22 EPA under this Paragraph shall be identified as “stipulated penalties” and  
23 shall be made by certified or cashier’s check made payable to “EPA  
24 Hazardous Substance Superfund.” The check, or a letter accompanying the  
25 check, shall reference the name and address of the party making payment, the  
26 Site name, EPA Region and Site Spill Number 0927, DOJ Case Number 90-  
27 11-2-354/13, and the civil action number, and shall be sent to:  
28

1 EPA - Cincinnati Accounting Operations  
2 Attn: Region 9 Receivables  
3 P.O. Box 371099M  
4 Pittsburgh, PA 15251

5 c. If any amounts due under Paragraph 8 are not paid by the  
6 required date, Settling Defendants shall be in violation of this Consent  
7 Decree and shall pay to DTSC, as a stipulated penalty, in addition to the  
8 Interest required by Paragraph 10, \$1,000 per violation per day that such  
9 payment is late.

10 d. Stipulated penalties are due and payable to DTSC within 30  
11 days of the date of the demand for payment of the penalties by DTSC. All  
12 payments to DTSC under this Paragraph shall be identified as "stipulated  
13 penalties" and shall be made by certified or cashier's check made payable to  
14 "Cashier, California Department of Toxic Substances Control." The check,  
15 or a letter accompanying the check, shall reference the name and address of  
16 the party making payment and the Site name, and shall be sent to:

17 Department of Toxic Substances Control  
18 Accounting/Cashier  
19 1001 I Street, 4<sup>th</sup> Floor  
20 P.O. Box 806  
21 Sacramento, CA 95812-0806

22 e. At the time of payment of any stipulated penalties to the  
23 United States, Settling Defendants shall send copies of check(s), and any  
24 accompanying transmittal letter(s), to DOJ, EPA, and the Regional Financial  
25 Management Officer as provided in Section XIV (Notices and Submissions)  
26 of this Consent Decree. Such notice shall reference the EPA Region and Site  
27 Spill Number 0927, DOJ Case Number 90-11-2-354/13, and the civil action  
28 number. At the time of payment of any stipulated penalties to DTSC,  
Settling Defendants shall send copies of check(s), and any accompanying  
transmittal letter(s), to DTSC as provided in Section XIV (Notices and  
Submissions).

1 f. Penalties shall accrue as provided in this Paragraph  
2 regardless of whether EPA or DTSC has notified Settling Defendants of the  
3 violation or made a demand for payment, but need only be paid upon  
4 demand. All penalties shall begin to accrue on the day after payment is due  
5 and shall continue to accrue through the date of payment. Nothing herein  
6 shall prevent the simultaneous accrual of separate penalties for separate  
7 violations of this Consent Decree.

8 12. If the United States or DTSC brings an action to enforce this  
9 Consent Decree, Settling Defendants shall reimburse the United States and  
10 DTSC for all costs of such action, including, but not limited to, costs of  
11 attorney time.

12 13. Payments made under this Section shall be in addition to any other  
13 remedies or sanctions available to Plaintiffs by virtue of Settling Defendants'  
14 failure to comply with the requirements of this Consent Decree.

15 14. Notwithstanding any other provision of this Section, the United  
16 States may, in its unreviewable discretion, waive payment of any portion of  
17 the stipulated penalties that have accrued to the United States pursuant to this  
18 Consent Decree. Notwithstanding any other provision of this Section, DTSC  
19 may, in its unreviewable discretion, waive payment of any portion of the  
20 stipulated penalties that have accrued to DTSC pursuant to this Consent  
21 Decree. Payment of stipulated penalties shall not excuse Settling Defendants  
22 from payment as required by Section V or from performance of any other  
23 requirements of this Consent Decree.

## 24 **VII. COVENANTS NOT TO SUE BY PLAINTIFFS**

25 15. Covenants Not to Sue. Except as specifically provided in Section  
26 VIII (Reservations of Rights by Plaintiffs), the United States covenants not to  
27 sue or to take administrative action against Settling Defendants pursuant to  
28 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs.

1 Except as otherwise specifically provided in Section VIII (Reservations of  
2 Rights by Plaintiffs), DTSC covenants not to sue or to take administrative  
3 action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42  
4 U.S.C. § 9607(a), for recovery of DTSC Response Costs. These covenants  
5 not to sue shall take effect upon receipt by EPA and DTSC of all payments  
6 required by Section V and any amount due under Section VI (Failure to  
7 Comply with Consent Decree). These covenants not to sue are conditioned  
8 upon the satisfactory performance by Settling Defendants of their obligations  
9 under this Consent Decree. These covenants not to sue extend only to Settling  
10 Defendants and do not extend to any other person.

11 **VIII. RESERVATIONS OF RIGHTS BY PLAINTIFFS**

12 16. The United States and DTSC reserve, and this Consent Decree is  
13 without prejudice to, all rights against Settling Defendants with respect to all  
14 matters not expressly included within the Covenants Not to Sue in Paragraph  
15 15. Notwithstanding any other provision of this Consent Decree, the United  
16 States and DTSC reserve all rights against Settling Defendants with respect to:

- 17 a. liability for failure of Settling Defendants to meet a  
18 requirement of this Consent Decree;
- 19 b. liability for costs incurred or to be incurred by the United  
20 States that are not within the definition of Response Costs;
- 21 c. liability for costs incurred or to be incurred by DTSC that are  
22 not within the definition of DTSC Response Costs;
- 23 d. liability for additional operable units at the Site, or a final  
24 response action, including, but not limited to, the final Record of Decision for  
25 the BPOU Area;
- 26 e. liability for injunctive relief or any administrative action under  
27 Section 106 of CERCLA, 42 U.S.C. § 9606;
- 28 f. criminal liability; and

1 g. liability for damages for injury to, destruction of, or loss of  
2 natural resources, and for the costs of any natural resource damage  
3 assessments.

4 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

5 17. Settling Defendants covenant not to sue and agree not to assert any  
6 claims or causes of action against the United States or DTSC, or their  
7 contractors or employees, with respect to Response Costs, the Work, and  
8 DTSC Response Costs or this Consent Decree, including, but not limited to:

9 a. any direct or indirect claim for reimbursement from the  
10 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112,  
11 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or  
12 any other provision of law;

13 b. any claim arising out of the response actions at the Site for  
14 which the Response Costs or DTSC Response Costs were incurred, including  
15 any claim under the United States Constitution, the Constitution of the State  
16 of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice  
17 Act, 28 U.S.C. § 2412, as amended, or at common law; or

18 c. any claim against the United States or DTSC pursuant to  
19 Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to  
20 Response Costs, the Work or DTSC Response Costs.

21 18. Nothing in this Consent Decree shall be deemed to constitute  
22 approval or preauthorization of a claim within the meaning of Section 111 of  
23 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

24 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

25 19. Nothing in this Consent Decree shall be construed to create any  
26 rights in, or grant any cause of action to, any person not a Party to this  
27 Consent Decree. The Parties expressly reserve any and all rights (including,  
28 but not limited to, any right to contribution), defenses, claims, demands, and

1 causes of action that they may have with respect to any matter, transaction, or  
2 occurrence relating in any way to the Site against any person not a Party  
3 hereto.

4 20. The Parties agree, and by entering this Consent Decree this Court  
5 finds, that Settling Defendants are entitled, as of the date of entry of this  
6 Consent Decree, to protection from contribution actions or claims as provided  
7 by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters  
8 addressed” in this Consent Decree. The “matters addressed” in this Consent  
9 Decree are Response Costs and DTSC Response Costs.

10 21. Settling Defendants agree that, with respect to any suit or claim for  
11 contribution brought by them for matters related to this Consent Decree, they  
12 will notify EPA, DOJ, and DTSC in writing no later than 60 days prior to the  
13 initiation of such suit or claim. Settling Defendants also agree that, with  
14 respect to any suit or claim for contribution brought against them for matters  
15 related to this Consent Decree, they will notify EPA, DOJ, and DTSC in  
16 writing within 10 days of service of the complaint or claim upon them. In  
17 addition, Settling Defendants shall notify EPA, DOJ, and DTSC within 10  
18 days of service or receipt of any Motion for Summary Judgment, and within  
19 10 days of receipt of any order from a court setting a case for trial, for matters  
20 related to this Consent Decree.

21 22. In any subsequent administrative or judicial proceeding initiated by  
22 the United States or DTSC for injunctive relief, recovery of response costs, or  
23 other relief relating to the Site, Settling Defendants shall not assert, and may  
24 not maintain, any defense or claim based upon the principles of waiver, *res*  
25 *judicata*, collateral estoppel, issue preclusion, claim-splitting, or other  
26 defenses based upon any contention that the claims raised by the United States  
27 or DTSC in the subsequent proceeding were or should have been brought in  
28 the instant case; provided, however, that nothing in this Paragraph affects the

1 enforceability of the Covenants Not to Sue by Plaintiffs set forth in Section  
2 VII.

### 3 **XI. ACCESS**

4 23. If the Site, or any other property where access is needed to  
5 implement response activities at the Site, is owned or controlled by Settling  
6 Defendants, they shall, commencing on the date of lodging of this Consent  
7 Decree, provide the United States, DTSC, and their representatives, including  
8 EPA and contractors, with access at all reasonable times to the Site, or to such  
9 other property, for the purpose of conducting any response activity related to  
10 the Site, including, but not limited to, the following activities:

11 1. Monitoring, investigation, removal, remedial or other  
12 activities at the Site;

13 2. Verifying any data or information submitted to the  
14 United States or DTSC;

15 3. Conducting investigations relating to contamination at  
16 or near the Site;

17 4. Obtaining samples;

18 5. Assessing the need for, planning, or implementing  
19 response actions at or near the Site;

20 6. Inspecting and copying records, operating logs,  
21 contracts, or other documents maintained or generated by Settling Defendants  
22 or their agents, consistent with Section XII (Access to Information); and

23 7. Assessing Settling Defendants' compliance with this  
24 Agreement.

25 24. Notwithstanding any provision of this Agreement, EPA and DTSC  
26 retain all of their access authorities and rights, as well as all of their rights to  
27 require land/water use restrictions, including enforcement authorities related  
28 thereto, under CERCLA, RCRA, and any other applicable statute or

1 regulations.

## 2 **XII. ACCESS TO INFORMATION**

3 25. Settling Defendants shall provide to EPA and DTSC, upon request,  
4 copies of all records, reports, or information (hereinafter referred to as  
5 “records”) within their possession or control or that of their contractors or  
6 agents relating to activities at the Site or to the implementation of this Consent  
7 Decree, including, but not limited to, sampling, analysis, chain of custody  
8 records, manifests, trucking logs, receipts, reports, sample traffic routing,  
9 correspondence, or other documents or information related to the Site.

### 10 26. Confidential Business Information and Privileged Documents.

11 a. Settling Defendants may assert business confidentiality claims  
12 covering part or all of the records submitted to Plaintiffs under this Consent  
13 Decree to the extent permitted by and in accordance with Section 104(e)(7) of  
14 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records  
15 determined to be confidential by EPA will be accorded the protection  
16 specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality  
17 accompanies records when they are submitted to EPA and DTSC, or if EPA  
18 has notified Settling Defendants that the records are not confidential under the  
19 standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the  
20 public may be given access to such records without further notice to Settling  
21 Defendants.

22 b. Settling Defendants may assert that certain records are  
23 privileged under the attorney-client privilege or any other privilege recognized  
24 by federal law. If Settling Defendants assert such a privilege in lieu of  
25 providing records, they shall provide Plaintiffs with the following: 1) the title  
26 of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*,  
27 company or firm), and address of the author of the record; 4) the name and  
28 title of each addressee and recipient; 5) a description of the subject of the



1 record; and 6) the privilege asserted. If a claim of privilege applies only to a  
2 portion of a record, the record shall be provided to Plaintiffs in redacted form  
3 to mask the privileged information only. Settling Defendants shall retain all  
4 records that they claim to be privileged until the United States has had a  
5 reasonable opportunity to dispute the privilege claim and any such dispute has  
6 been resolved in the Settling Defendants' favor. However, no records created  
7 or generated pursuant to the requirements of this or any other settlement with  
8 the EPA pertaining to the Site shall be withheld on the grounds that they are  
9 privileged.

10 27. No claim of confidentiality shall be made with respect to any data,  
11 including, but not limited to, all sampling, analytical, monitoring,  
12 hydrogeologic, scientific, chemical, or engineering data, or any other  
13 documents or information evidencing conditions at or around the Site.

### 14 **XIII. RETENTION OF RECORDS**

15 28. Until 10 years after the entry of this Consent Decree, Settling  
16 Defendants shall preserve and retain all records now in their possession or  
17 control, or which come into their possession or control, that relate in any  
18 manner to response actions taken at the Site or the liability of any person  
19 under CERCLA with respect to the Site, regardless of any corporate retention  
20 policy to the contrary.

21 29. After the conclusion of the 10-year document retention period in  
22 the preceding Paragraph, Settling Defendants shall notify EPA, DOJ, and  
23 DTSC at least 90 days prior to the destruction of any such records, and, upon  
24 request by EPA, DOJ or DTSC, Settling Defendants shall deliver any such  
25 records to EPA or DTSC. Settling Defendants may assert that certain records  
26 are privileged under the attorney-client privilege or any other privilege  
27 recognized by federal law. If Settling Defendants assert such a privilege, they  
28 shall provide Plaintiffs with the following: 1) the title of the record; 2) the

1 date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and  
2 address of the author of the record; 4) the name and title of each addressee and  
3 recipient; 5) a description of the subject of the record; and 6) the privilege  
4 asserted. If a claim of privilege applies only to a portion of a record, the  
5 record shall be provided to Plaintiffs in redacted form to mask the privileged  
6 information only. Settling Defendants shall retain all records that they claim  
7 to be privileged until the United States has had a reasonable opportunity to  
8 dispute the privilege claim and any such dispute has been resolved in the  
9 Settling Defendants' favor. However, no records created or generated  
10 pursuant to the requirements of this or any other settlement with the EPA  
11 pertaining to the Site shall be withheld on the grounds that they are privileged.

12 30. Each Settling Defendant hereby certifies that, to the best of its  
13 knowledge and belief, after thorough inquiry, it has not altered, mutilated,  
14 discarded, destroyed or otherwise disposed of any records, reports, or  
15 information relating to its potential liability regarding the Site since  
16 notification of potential liability by the United States or DTSC or the filing of  
17 suit against it regarding the Site and that it has fully complied with any and all  
18 EPA requests for information pursuant to Sections 104(e) and 122(e) of  
19 CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42  
20 U.S.C. § 6972.

#### 21 **XIV. NOTICES AND SUBMISSIONS**

22 31. Whenever, under the terms of this Consent Decree, notice is  
23 required to be given or a document is required to be sent by one party to  
24 another, it shall be directed to the individuals at the addresses specified below,  
25 unless those individuals or their successors give notice of a change to the  
26 other Parties in writing. Written notice as specified herein shall constitute  
27 complete satisfaction of any written notice requirement of the Consent Decree  
28 with respect to the United States, EPA, DOJ, DTSC, and Settling Defendants,

1 respectively.

2 As to the United States:

3 As to DOJ:

4 Chief, Environmental Enforcement Section  
5 Environment and Natural Resources Division  
6 U.S. Department of Justice  
7 P.O. Box 7611, Ben Franklin Station  
8 Washington, D.C. 20044  
9 Re: DJ # 90-11-2-354/13

10 and

11 Robert D. Mullaney  
12 Trial Attorney  
13 Environmental Enforcement Section  
14 U.S. Department of Justice  
15 301 Howard Street, Suite 1050  
16 San Francisco, CA 94105

17 As to EPA:

18 Janet Magnuson, ORC-3  
19 Assistant Regional Counsel  
20 United States Environmental Protection Agency  
21 75 Hawthorne Street  
22 San Francisco, CA 94105

23 and

24 Wayne Praskins, SFD-7-3  
25 EPA Project Coordinator  
26 United States Environmental Protection Agency  
27 75 Hawthorne Street  
28 San Francisco, CA 94105

29 As to the Regional Financial Management Officer:

30 Joe Schmidt, PMD-5  
31 United States Environmental Protection Agency  
32 75 Hawthorne Street  
33 San Francisco, CA 94105

34 As to DTSC:

35 Jacalyn Spizman  
36 DTSC Project Coordinator  
37 Department of Toxic Substances Control  
38 5796 Corporate Avenue  
39 Cypress, CA 90630

40 and

41 Ann Rushton  
42 Office of the Attorney General  
43 300 South Spring Street  
44 Los Angeles, CA 90013

1  
2 As to the Settling Defendants:

3 Philip Hunsucker  
4 Brian L. Zagon  
5 Resolution Law Group, P.C.  
6 3717 Mt. Diablo Boulevard, Suite 200  
7 Lafayette, CA 95449  
8 Tel.: (925) 284-0840  
9 Fax: (925) 284-0870

10 and  
11 David C. Solinger  
12 Law Offices of David C. Solinger  
13 410 South Grand Avenue  
14 Covina, CA 91724  
15 Tel.: (626) 966-1606  
16 Fax: (626) 339-7765

#### 17 **XV. RETENTION OF JURISDICTION**

18 32. This Court shall retain jurisdiction over this matter for the purpose  
19 of interpreting and enforcing the terms of this Consent Decree.

#### 20 **XVI. INTEGRATION/APPENDICES**

21 33. This Consent Decree and its appendices constitute the final,  
22 complete and exclusive agreement and understanding among the Parties with  
23 respect to the settlement embodied in this Consent Decree. The Parties  
24 acknowledge that there are no representations, agreements or understandings  
25 relating to the settlement other than those expressly contained in this Consent  
26 Decree. The following appendices are attached to and incorporated into this  
27 Consent Decree:

28 “Appendix A” is the map of the BPOU Area;

“Appendix B” is a copy of the ROD; and

“Appendix C” is a copy of the ESD.

#### 29 **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

30 34. This Consent Decree shall be lodged with the Court for a period of  
31 not less than 30 days for public notice and comment. The United States  
32 reserves the right to withdraw or withhold its consent if the comments

1 regarding the Consent Decree disclose facts or considerations which indicate  
2 that this Consent Decree is inappropriate, improper, or inadequate. Settling  
3 Defendants consent to the entry of this Consent Decree without further notice.

4 35. If for any reason this Court should decline to approve this Consent  
5 Decree in the form presented, this agreement is voidable at the sole discretion  
6 of any party and the terms of the agreement may not be used as evidence in  
7 any litigation between the Parties.

#### 8 **XVIII. SIGNATORIES/SERVICE**

9 36. Each undersigned representative of Settling Defendants to this  
10 Consent Decree, the Assistant Attorney General for the Environment and  
11 Natural Resources Division of the United States Department of Justice, or his  
12 delegate, and the Deputy Attorney General of the California Department of  
13 Justice certifies that he or she is authorized to enter into the terms and  
14 conditions of this Consent Decree and to execute and bind legally such Party  
15 to this document.

16 37. Settling Defendants hereby agree not to oppose entry of this  
17 Consent Decree by this Court or to challenge any provision of this Consent  
18 Decree, unless the United States has notified Settling Defendants in writing  
19 that it no longer supports entry of the Consent Decree.

20 38. Settling Defendants shall identify, on the attached signature page,  
21 the name and address of an agent who is authorized to accept service of  
22 process by mail on behalf of Settling Defendants with respect to all matters  
23 arising under or relating to this Consent Decree. Settling Defendants hereby  
24 agree to accept service in that manner and to waive the formal service  
25 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and  
26 any applicable local rules of this Court, including, but not limited to, service  
27 of a summons. The Parties agree that Settling Defendants need not file an  
28 answer to the complaint in this action unless or until the Court expressly

declines to enter this Consent Decree.

**XIX. FINAL JUDGMENT**

39. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, DTSC, and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated: \_\_\_\_\_

United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States and California Department of Toxic Substances  
3 Control v. White & White Properties, et al., relating to the BPOU Area.

4 FOR THE UNITED STATES OF AMERICA

5  
6  
7 Dated:\_\_\_\_\_

8 Kelly A. Johnson  
9 Acting Assistant Attorney General  
10 Environment and Natural Resources  
11 Division  
12 U.S. Department of Justice  
13 Washington, D.C. 20530

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Dated:\_\_\_\_\_

Robert D. Mullaney  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, California 94105

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Dated:\_\_\_\_\_

\_\_\_\_\_  
Keith Takata  
Director, Superfund Division  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Dated:\_\_\_\_\_

\_\_\_\_\_  
Janet A. Magnuson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
San Francisco, CA 94105



1 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES  
2 CONTROL

3 Dated:\_\_\_\_\_

4 Thomas Cota, Chief  
5 Southern California Cleanup  
6 Operations Branch, Cypress Office  
7 Department of Toxic Substances  
8 Control  
5796 Corporate Avenue  
Cypress, California 90630

9 Dated:\_\_\_\_\_

10 Ann Rushton  
11 Deputy Attorney General  
12 California Department of Justice  
13 300 South Spring Street  
14 Los Angeles, California 90013  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States and State of California Department of Toxic  
3 Substances Control v. White & White Properties, et al., relating to the BPOU  
4 Area.

5 FOR DEFENDANTS WHITE & WHITE PROPERTIES, RPM MERIT, INC.,  
6 WHICO MACHINE COMPANY, INC., WHITE, WHITE & WHITE,  
7 WHITE, WHITE, WHITE & WHITE PROPERTIES, NORAM  
8 CORPORATION, ASTRO PRODUCTIONS & CAM ENGINEERING,  
9 DONALD WHITE, JOHN WHITE, ROBERT RAUTENBERG, THE  
10 ESTATE OF EVELYN RAUTENBERG, KENNETH WIDEMAN, STELLA  
11 WIDEMAN, THE 204 SOUTH MOTOR AVENUE QSF TRUST, AND  
12 MOTOR/IRWINDALE NEIGHBORHOOD QSF TRUST

13 Dated: \_\_\_\_\_

\_\_\_\_\_  
Donald White, an individual

14 Dated: \_\_\_\_\_

\_\_\_\_\_  
John White, an individual

15 Dated: \_\_\_\_\_

\_\_\_\_\_  
RPM Merit, Inc., by

\_\_\_\_\_, its

16 Dated: \_\_\_\_\_

\_\_\_\_\_  
Whico Machine Company, Inc., by

\_\_\_\_\_, its

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Dated: \_\_\_\_\_

\_\_\_\_\_  
White & White Properties, by Donald  
White, as general partner

Dated: \_\_\_\_\_

\_\_\_\_\_  
White, White, White & White  
Properties, by Donald White, as general  
partner

Dated: \_\_\_\_\_

\_\_\_\_\_  
White, White & White, by Donald  
White, as general partner

Dated: \_\_\_\_\_

\_\_\_\_\_  
Noram Corporation, by  
\_\_\_\_\_, its

Dated: \_\_\_\_\_

\_\_\_\_\_  
Astro Productions and Cam  
Engineering, by  
\_\_\_\_\_, its

Dated: \_\_\_\_\_

\_\_\_\_\_  
Stella Wideman, an individual

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Dated: \_\_\_\_\_

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Kenneth Wideman, an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
Estate of Evelyn Rautenberg, by

\_\_\_\_\_, its  
Executor

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert Rautenberg, an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
204 South Motor Avenue Qualified  
Settlement Fund Trust, by

\_\_\_\_\_, its

Dated: \_\_\_\_\_

\_\_\_\_\_  
Motor/Irwindale Neighborhood  
Qualified Settlement Fund Trust, by

\_\_\_\_\_, its

1 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

2 David C. Solinger  
3 Law Offices of David C. Solinger  
4 410 South Grand Avenue  
5 Covina, CA 91724  
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